

109TH CONGRESS
1ST SESSION

H. R. 895

To provide for interagency planning for preparing for, defending against, and responding to the consequences of terrorist attacks against the Yucca Mountain Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2005

Ms. BERKLEY (for herself, Mr. MATHESON, Ms. CARSON, Mr. MARKEY, and Mr. RANGEL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for interagency planning for preparing for, defending against, and responding to the consequences of terrorist attacks against the Yucca Mountain Project, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Waste Ter-
5 rorist Threat Assessment and Protection Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The September 11 terrorist attacks in New
4 York City, Washington, D.C., and Pennsylvania
5 were the deadliest and costliest terrorist attacks
6 against the United States in its history, resulting in
7 the deaths of over 3,000 people at the World Trade
8 Center, Pentagon, and Pennsylvania crash site.

9 (2) The economic and cleanup costs as a result
10 of the September 11 terrorist attacks are estimated
11 at \$1,000,000,000 in New York City alone.

12 (3) The attacks have resulted in massive eco-
13 nomic disruption to the United States. The New
14 York Stock Exchange's Dow Jones Industrial Aver-
15 age dropped over 12 percent and the NASDAQ mar-
16 ket dropped 11.7 percent within the first 2 weeks
17 after the attacks.

18 (4) The September 11 attacks represent a dra-
19 matic expansion in the ability of terrorists to inflict
20 massive damage, including the wide-scale loss of
21 human life and economic disruption to the United
22 States and the world.

23 (5) Terrorists are willing to use any and all
24 methods to bring about their desire to destroy
25 human life and property.

1 (6) The terrorists who attacked the United
2 States have demonstrated their willingness and de-
3 sire to target innocent civilians.

4 (7) Terrorists can be expected to continue to
5 improve their destructive capabilities. Their net-
6 works have become more sophisticated and resource-
7 ful in carrying out heinous acts of destruction.

8 (8) Since its inception in March 2002, the
9 threat alert has consistently been at an “elevated”
10 level, reaching a level of “high” 6 times.

11 (9) To counter this threat, the United States
12 should take every reasonable step, consistent with
13 the principles upon which this country was founded,
14 to restrict terrorists’ ability to inflict damage against
15 the United States.

16 (10) Instead of making the United States safer,
17 the proposed Yucca Mountain Project, as currently
18 designed, would give terrorists an obvious huge,
19 easy-to-attack target that, at any point, could cause
20 massive economic and civilian casualties within the
21 United States.

22 (11) The Yucca Mountain Project proposes to
23 ship 77,000 tons of deadly high-level radioactive nu-
24 clear waste throughout the United States over the
25 next 30 to 40 years. High-level radioactive nuclear

1 waste is one of the most toxic substances known to
2 mankind.

3 (12) While there is concern about the potential
4 terrorist attacks directed against spent fuel stored at
5 nuclear facilities, exponentially more radioactive
6 waste would be stored, including potentially above
7 ground, at Yucca Mountain, than at any existing nu-
8 clear facility, making Yucca Mountain an inviting
9 target for terrorism.

10 (13) The waste would be transported by rail
11 and by truck through at least 43 States, through
12 hundreds of cities and towns, and through more
13 than 360 congressional districts.

14 (14) Findings of the Nevada State Nuclear
15 Projects Agency demonstrate that a July 18, 2001,
16 train accident in a Baltimore tunnel created a fire
17 situation that would have been hot enough to breach
18 a nuclear waste cask and release a cloud of sus-
19 pended radioactive particles. Such findings conclude
20 that this type of contamination would spread over
21 33 square miles, cost more than \$13,000,000,000 to
22 clean up, and cause up to 31,824 cancer-related
23 deaths.

24 (15) At almost every stage of the Yucca Moun-
25 tain Project, high-level radioactive nuclear waste

1 would be very vulnerable to terrorist attacks. Terror-
2 ists could attack or steal the waste as it travels on
3 our roads, highways, railways, or waterways, as it is
4 stored or moved at intermodal storage facilities or
5 storage depots, or at the proposed repository itself.

6 (16) The United States Government, in at-
7 tempting to implement the Nuclear Waste Policy Act
8 of 1982, has not sufficiently addressed the threat of
9 terrorist attacks.

10 (17) The Department of Energy has failed to
11 address the Yucca Mountain Project's vulnerability
12 to terrorism and sabotage, intrusions, trespassing,
13 vandalism, arson, and bomb-related incidents, as ex-
14 pressed by the State of Nevada and independent re-
15 searchers throughout the country. As a result, the
16 Department of Energy has failed to discuss or pro-
17 vide any plan for prevention and response to ter-
18 rorist attacks directed at Yucca Mountain.

19 (18) The Department of Energy's current
20 methodology for assessing risks seriously underesti-
21 mates those associated with sabotage and terrorism
22 against radioactive shipments, waste stored at inter-
23 modal storage facilities or storage depots, and at
24 Yucca Mountain itself.

1 (19) The Nuclear Regulatory Commission, the
2 agency in charge of protecting public health and
3 safety and the environment from the harmful effects
4 of nuclear waste, has not revised its rules regarding
5 the transportation of nuclear waste since the early
6 1970s. The antiquated rules do not address modern-
7 day threats and weapons, nor the increased risk
8 posed by today's most violent and maniacal terror-
9 ists.

10 **SEC. 3. YUCCA MOUNTAIN PROJECT VULNERABILITY AND**
11 **DEFENSE PLAN.**

12 The Secretary of Homeland Security shall coordinate
13 the development and implementation of an interagency
14 plan, in conjunction with appropriate Federal, State, and
15 local agencies and with public input, to prepare for and
16 defend against Federal crimes of terrorism targeting any
17 aspect of the Yucca Mountain Project. The interagency
18 plan shall—

19 (1) include a comprehensive analysis of the
20 safety and vulnerability to Federal crimes of ter-
21 rorism of the Yucca Mountain Project;

22 (2) address attacks against—

23 (A) rail, truck, and barge shipments of nu-
24 clear waste;

1 (B) facilities, equipment, infrastructure,
2 and vehicles used for such shipments of nuclear
3 waste;

4 (C) personnel working for the Yucca
5 Mountain Project;

6 (D) all intermediary, staging, transfer,
7 intermodal, and temporary storage facilities
8 used for shipping nuclear waste to the Yucca
9 Mountain repository;

10 (E) Yucca Mountain repository facilities,
11 vehicles, and equipment;

12 (F) all water and power systems used by
13 the Yucca Mountain Project; and

14 (G) nuclear waste containers for transpor-
15 tation, transfer, or storage;

16 (3) give special emphasis to addressing—

17 (A) the use of nuclear waste as a radio-
18 logical weapon;

19 (B) the use of high-energy explosives, anti-
20 tank missiles, armor-piercing technologies, and
21 other sophisticated technologies; and

22 (C) sabotage or theft of high-level nuclear
23 waste;

1 (4) include a comprehensive strategy for de-
2 fending the Yucca Mountain Project against all Fed-
3 eral crimes of terrorism, which shall address—

4 (A) vulnerabilities analyzed under para-
5 graph (1);

6 (B) the defense of the Yucca Mountain
7 Project against air and ground assaults, truck
8 bombs, attacks using sophisticated armor-piere-
9 ing technologies, suicide attacks, and other po-
10 tential military-style attacks;

11 (C) credible worst-case assumptions about
12 the timing and location of potential attacks;

13 (D) the effects of weather conditions dur-
14 ing and after attacks;

15 (E) the use of expanded no-fly zones, and
16 the development of policy regarding infractions
17 of a no-fly zone, over key areas involved in the
18 Yucca Mountain Project, with emphasis paid to
19 whether the size of the no-fly zone is sufficient
20 to protect against an airborne attack, ways of
21 defending against this type of attack, and
22 whether there is ample time for our national de-
23 fense to defend against an infraction of the no-
24 fly zone;

1 (F) the use of background and security
2 checks of all personnel related to the transport
3 of nuclear waste to Yucca Mountain;

4 (G) developing a uniform Federal standard
5 for the use of deadly force to protect all aspects
6 of the Yucca Mountain Project; and

7 (H) specific rules of engagement for a po-
8 tential airborne attack; and

9 (5) include an analysis of the economic, public
10 health, and environmental costs and impacts of im-
11 plementing the interagency plan.

12 **SEC. 4. YUCCA MOUNTAIN PROJECT TERRORISM CON-**
13 **SEQUENCE ASSESSMENT AND RESPONSE**
14 **PLAN.**

15 The Federal Emergency Management Agency, in co-
16 ordination with appropriate Federal, State, and local
17 agencies, shall coordinate the development and implemen-
18 tation of a comprehensive interagency plan to ensure that
19 Federal, State, and local government response plans and
20 programs can respond adequately to the consequences of
21 Federal crimes of terrorism directed against any stage of
22 the Yucca Mountain Project. The plan shall include—

23 (1) necessary prerespense preparations and
24 evacuation plans for Federal, State, and local gov-
25 ernments;

1 (2) procedures for notifying State and local
2 emergency response units when nuclear waste is
3 transported through their local area;

4 (3) an analysis and a comprehensive set of pro-
5 cedures to address the impacts of Federal crimes of
6 terrorism that result in a release of radioactive ma-
7 terials including—

8 (A) immediate and long-term public health
9 effects;

10 (B) environmental impacts, broadly de-
11 fined;

12 (C) direct socioeconomic impacts, including
13 cleanup and disposal costs and opportunity
14 costs, to affected individuals and businesses;
15 and

16 (D) indirect socioeconomic impacts, includ-
17 ing economic losses resulting from perceptions
18 of risk and stigma effects; and

19 (4) a comprehensive cost-benefit analysis of the
20 economic, public health, and environmental effects of
21 implementing the plan, including analysis of the re-
22 percussions and costs from a wide range of types of
23 Federal crimes of terrorism.

1 **SEC. 5. TECHNICAL REVIEW.**

2 The Secretary of Homeland Security and the Federal
3 Emergency Management Agency shall enter into appro-
4 priate arrangements with the National Research Council
5 for technical review of the plans developed under sections
6 3 and 4, respectively. Such reviews shall—

7 (1) address the strengths and shortcomings of
8 the analyses and preparations set forth in the plans;
9 and

10 (2) pay special attention to—

11 (A) the need for comprehensive and reli-
12 able physical testing, including full-scale-to-de-
13 struction and scale model testing, to evaluate
14 weapons capabilities and limitations;

15 (B) container vulnerability to high-energy
16 explosive devices, and the effects on nuclear
17 waste; and

18 (C) the appropriateness of existing com-
19 puter models for evaluating near-site environ-
20 mental dispersion of released radionuclides, re-
21 sulting health effects, and cleanup and disposal
22 requirements.

23 **SEC. 6. DEPARTMENT OF ENERGY RECOMMENDATION.**

24 The Secretary of Energy shall not submit a license
25 application under section 114(b) of the Nuclear Waste
26 Policy Act of 1982 (42 U.S.C. 10134(b)), and the Nuclear

1 Regulatory Commission shall not issue any license for a
2 repository at Yucca Mountain under section 114(d) of the
3 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)),
4 unless—

5 (1) the interagency plans required under sec-
6 tions 3 and 4 are completed and included in the
7 final environmental impact statement for Yucca
8 Mountain, and all rules and recommendations imple-
9 mented completely;

10 (2) public hearings have been held for all af-
11 fected populations;

12 (3) the Secretary has certified that all facets of
13 the Yucca Mountain Project are not vulnerable to
14 Federal crimes of terrorism; and

15 (4) the Secretary of Homeland Security has
16 prepared and transmitted to the Congress a report
17 on the potential liability costs and damages resulting
18 from a wide range of Federal crimes of terrorism
19 against the Yucca Mountain Project.

20 **SEC. 7. DEFINITIONS.**

21 For purposes of this Act—

22 (1) the term “Federal crime of terrorism” has
23 the meaning given that term in section 2332b(g)(5)
24 of title 18, United States Code; and

1 (2) the term “Yucca Mountain Project” means
2 all aspects of the high-level nuclear waste repository
3 currently being studied at Yucca Mountain. The
4 term includes all Department of Energy transpor-
5 tation plans, interim storage facilities, intermodal
6 transfer facilities, repositories, and any other site
7 where high-level waste will be handled in relation to
8 the Yucca Mountain Project.

○